



Chairperson: Bob Wyatt, NW Natural
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August 19, 2009

Chip Humphrey
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U.S. Environmental Protection Agency, Region 10
805 SW Broadway, Suite 500
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**Re: August 7, 2009 EPA Direction on Portland Harbor Remedial Action Objectives (RAOs)
for Lower Willamette River (Lower Willamette River, Portland Harbor Superfund Site,
USEPA Docket No: CERCLA-10-2001-0240)**

Chip and Eric:

The LWG has reviewed EPA's direction on RAOs dated August 7, 2009. To assist us in evaluating the LWG's position, the LWG is requesting clarifications, as described below, on several issues in the revised RAOs proposed by EPA. We also request a follow-up meeting with EPA Project Managers and legal counsel on September 8th or 9th with the goal of obtaining any further clarifications required to resolve these RAOs issues.

As we discussed, because EPA's letter may be interpreted as "requirements" under Section XVIII.1 of the Administrative Order on Consent, the LWG is requesting an extension of the 14-day deadline of initiating formal dispute resolution. This will allow time for EPA to respond to these questions and meet with the LWG so a formal dispute, if any, is narrowly focused on issues where we truly have significant disagreement. We propose that the deadline to initiate dispute be set 14 days after the meeting.

1. EPA's RAO 1 addresses human health risks from incidental ingestion of and dermal contact with sediment and groundwater. The explanatory statement that follows omits the word "incidental" and appears to expand the scope of the RAO to include ingestion of groundwater beneath the river. Does EPA intend this RAO to address groundwater beneath the river as a drinking water source?
2. EPA's RAO 1 addresses human health risks from both contaminated sediments and groundwater. In appropriate cases, both the risk assessments and FS will address human health risks from groundwater by assessing the risks presented by the combination of groundwater/transition zone water and sediment, that is, through the chemistry of the bulk sediment. Is that an acceptable application of this RAO?
3. EPA RAOs 2, 3, 5, and 6 address human health and ecological exposures from surface water and via bioaccumulation in biota. The explanatory statement for these RAOs (and the others) has language that indicates the RAO will be met "through sediment

remedies”. Our interpretation of this language is that the FS should focus on appropriate sediment remedial alternatives to address the contributions of chemicals in sediments to surface water and biota. Do you agree?

4. EPA RAO 2 addresses human health exposure via bioaccumulation in biota, specifically through ingestion of fish and shellfish. The supporting text for RAO 2 clarifies that the goal is to reduce human health risk “through sediment remedies.” Is it EPA’s interpretation that the language in this RAO would lead to identification of ARARs/PRGs for sediment or would it lead to identification of ARARs/PRGs for surface water (e.g. Oregon Human Health Fish Consumption WQC)?
5. All RAOs use the phrase “identified ARARs”. Is EPA’s interpretation of this language that we would examine and determine the ARARs that are called for based on the objective of the RAO or would that determination be based on something else?
6. In Footnote ii, EPA defines sediments based on river bank elevations. Is EPA’s interpretation of this language that 1) bank materials above 13.3 ft NAVD88 are riparian soils; 2) below this elevation, bank materials are sediments; and 3) as defined, remediation of sediments will be evaluated in the FS, but remediation of riparian soils will not be evaluated in the FS?
7. Management Goal 3 addresses promoting healthy habitats through the sediments remedy. EPA removed language regarding LWG’s desire to enter into a Programmatic Consultation with NOAA Fisheries to address ESA compliance and mitigation. The LWG’s desire to seek a programmatic approach to ESA compliance was based on a comment EPA provided on the Round 2 Report on March 28, 2008. EPA commented that cleanup activities must be consistent with and supportive of the conservation and recovery of ESA listed species, and mitigation must be considered during the evaluation of remedial action alternatives. How can the LWG meet this request without engaging in a process with NOAA Fisheries and EPA in the context of the FS? Does EPA have an alternate recommendation? Also, EPA’s letter states that language regarding the programmatic consultation was deleted “at the request of the Natural Resource Trustees”. Can EPA explain the Trustees’ rationale for this request, and why EPA agreed?
8. In all RAOs, what is meant by “comply with identified ARARs”? It is the LWG’s understanding that RAOs are intended to address the unacceptable risks identified in the risk assessment process. Does EPA intend to use other methods besides the risk assessments to specify RAOs? The phrase “comply with identified ARARs” is not used in the example RAOs set forth in EPA’s 2005 Sediment Guidance. Why is this phrase necessary for the RAOs at this Site? Using RAO 3 as an example, does EPA intend through this RAO to impose MCLs as an ARAR anywhere in the surface water, even if the human health risk assessment determines that there is no unacceptable risk associated with the surface water ingestion pathway?

Thanks in advance for your replies to these questions. Please contact me to coordinate the meeting and establish the new dispute deadline.

Sincerely,



Bob Wyatt

cc: Confederated Tribes and Bands of the Yakama Nation
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of Siletz Indians of Oregon
 Confederated Tribes of the Umatilla Indian Reservation
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Nez Perce Tribe
 Oregon Department of Fish & Wildlife
 United States Fish & Wildlife
 Oregon Department of Environmental Quality
 LWG Legal
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